persons agreed to do or cause to be done an illegal act to *wit*, armed robbery in this case.

It is obvious that this charge was not referred to the learned Deputy Public Prosecutor who would normally read the draft charge submitted by the Police Prosecutor to see whether it is in conformity with the law under which the appellant was charged. It is also probable that the learned President had not examined the relevant law under which the charge was framed before he accepted the plea of guilty from the appellant.

In *Public Prosecutor* v. *Leong Yoon Meow* [1] and in *Abdul Salam* v. *Public Prosecutor*[2] – practical guidance on the method of framing the charge has been drawn by Justice Thomson (as he then was) for guidance of learned Presidents, Magistrates and Police Officers. I would say that this guidance is still relevant and should be observed by all concerned.

The record shows that upon the appellant pleading guilty to the charge, written facts of the case were submitted to the learned President, but there is no indication in the record that these facts were read and explained to the appellant. There is also no record indicating that the learned President has himself read and examined the facts of the case to see whether they were conformable with the law and in support of the charge. These might have been done as emphatically explained by the learned President, Sessions Court. But the record must speak for itself.

Upon looking at the written facts exhibited in the record, it is observed that before September 10, 1980 (not on October 11, 1980 as referred to in the charge), the appellant was seen by Loy Cheng Pong @ Ah Soh to discuss the robbery to be committed and in which one Liew Eng Choy @ Eng Choy and Ho Chee Kuan @ Soh Kuan were to take part.

On October 11, 1980, the robbery was committed by both Liew Eng Choy and Ho Chee Kuan. On the same day, the jewellery taken in the robbery was brought to the accused for disposal by him.

It is clear from the recorded facts that both the dates and the facts of the case do not support the charge. The date upon which the alleged conspiracy had taken place was before September 10, 1980 and not on October 11, 1980 as referred to in the charge.

To my mind, the facts of this case do not disclose an offence of conspiracy. It may constitute some other offence in the Penal Code which I would not say in view of the Order I would make.

The learned Deputy Public Prosecutor admitted the charge was defective but said that it was not fatal and did not amount to a failure of justice. In my view, besides a defective charge, the facts do not support the charge of conspiracy and there are too many unsatisfactory features in this case which if allowed uncorrected would have caused injustice to the appellant who was then not represented by counsel. In these circumstances I would exercise my power of revision and set aside the conviction and sentence against the appellant and I order that a new trial be conducted by a different Magistrate.

Order accordingly.

Solicitors: *R.K. Menon & Co.*

PUBLIC PROSECUTOR v. WONG CHAK HENG

[A.Cr.J. (Chan J.) January 23, 1985]
[Kuala Lumpur – Federal Territory Criminal Appeal Nos. 134 & 135 of 1982]

Criminal Law & Procedure – Sentencing – Offences of theft of spare parts of motor vehicles – Fine of $200 & $300 respectively – Whether sentence inadequate – Sentence revised – Considerations of individual deterrence – Penal Code (F.M.S. Cap. 45), s. 379.

The appellant pleaded guilty in the Magistrate Court to two cases of theft *viz*, the theft of the spare tyre and sports rim of a Datsun 120Y on January 22, 1982 and the theft of the spare tyre together with the rim of a Ford Laser on February 1, 1982.

At the time of committing the offences the appellant was 23 years old and had had no previous convictions. Both cases were heard on the same day and the respondent was fined $200 and $300 respectively for the first and second offence. The Public Prosecutor appealed against the inadequacy of the sentence imposed on the respondent for both offences.

Held: allowing the appeal: (1) in ordinary circumstances petty theft would not attract any immediate sentence of imprisonment. However, when one considers the extent to which the stealing of motor-car parts and accessories is rife at the present day, then the courts inevitably must view such an offence as a serious crime;

(2) the public is entitled to be protected against such offenders and they are not likely to be protected if lenient sentences are passed. This is because offenders are not likely to be discouraged by sentences which do not involve loss of liberty;

(3) in the present case, an immediate prison sentence consistent with the duty to protect the interests of the public and to punish and deter the criminal is necessary. In the premises a sentence of 18 months' imprisonment in addition to the $200 fine is proper in respect of the first offence and in respect of the second offence a concurrent sentence of two years' imprisonment in addition to the $300 would be appropriate.

Cases referred to:

(1) *R* v. *Smith* (1978) 67 Cr. App. R. 211.
(2) *R* v. *Davies* (1978) 67 Cr. App. R. 207, 210.
(3) *R* v. *Sargeant* (1974) 60 Cr. App. R. 74, 77.
(4) *R* v. *Curran* (1973) 57 Cr. App. R. 945, 947, 948.

CRIMINAL APPEAL.

Miss Lee Oi Kuan (Deputy Public Prosecutor) for the appellant.
L.C. Chong for the respondent.

Cur. Adv. Vult.

Chan J.: Wong Chak Heng, then aged 23, appeared at the Magistrate Court at Kuala Lumpur on August 17, 1982 when he pleaded guilty to two cases of theft, the first (Arrest Case A808/82) being the theft of the spare tyre and the sports rim of a Datsun 120y motorcar and the second (Arrest Case A812/82) being the theft of the spare tyre together with its rim of a Ford Laser motorcar. The first offence was committed on January 22, 1982 and the second offence was committed on February 1, 1982. Both cases were heard on the same day and for the first offence he was fined $200 and for the second offence he was fined $300. The value of the property that was stolen was worth $220 in the first case and $300 in the second case. Wong had no previous conviction. The tyres were subsequently recovered and according to Mr. Chong, his counsel, Wong had helped the police in their recovery. It was urged on his behalf that he did not commit the offences by himself. He was a member of a gang that went out to steal tyres. He was arrested because the motorcar which he had used to commit the offences was traced to him. He is at present working as a rubber tapper and he is living with his parents. The Public Prosecutor now appeals against the inadequacy of the sentence imposed on Wong for the two offences. They were both offences under section 379 of the Penal Code.

In the case of *Reg.* v. *Smith* (1). I find Lawton L.J. saying this in connection with burglary of private dwelling houses, at p. 212:

"It may be necessary to set out and stress the reasons why at the present time offences of this kind should be dealt with severely and usually by a custodial sentence. It is within the knowledge of this Court, and the criminal statistics bear it out, that one of the growth criminal industries in this country is burglary. The particular type of burglary which is becoming very common indeed is breaking into other people's homes. On all sides members of the public, if they have not been burgled themselves, hear that their friends and relatives have been. This Court knows that when there is a burglary in a house great distress is caused. Not only is there a loss of property but there is induced a feeling of insecurity. This Court knows that when the householders are women they sometimes worry a great deal about what has happened to them. It has been said, and rightly said, that when a house has been burgled it never seems the same again.

This Court, for some months has been pointing out to trial judges, and it does so again, that burglary in the form of housebreaking is a very serious crime indeed. The public are entitled to be protected against burglars. In the opinion of this Court they are not likely to be protected if lenient sentences are passed."

Although Lawton L.J. spoke on burglary of private dwelling houses, there are on the other hand some other offences which are particularly rife at the moment in this country. For example; robberies, offences involving serious violence, use of a weapon to wound, extortion, burglary of private dwelling houses, the stealing of car accessories from parked vehicles, motorcar theft and purse or handbag snatching in the streets or in stores. Crimes of that kind are rife at the present time and it is quite plain that where a person is charged with any of the offences which I have mentioned then the Courts inevitably must take a serious view.

It is not safe to park one's motor vehicle anywhere in the City or in any of the larger towns in the country. This is because motorcar theft and the theft of articles from motorcars are a daily occurrence throughout the country. In ordinary circumstances, petty theft would not have attracted any immediate sentence of imprisonment. But when one considers the extent to which the stealing of motorcar parts and accessories is rife at the present day, then the Court inevitably must view such an offence as a very serious crime indeed. Let it be repeated: it may be necessary to set out and stress the reasons why at the present time offences of this kind should be dealt with severely and usually by a custodial sentence. On all sides members of the public, if they have not lost their cassette players or radios or even their cars, hear that their friends and relatives have. The public are entitled to be protected against such offenders. In the opinion of this court, they are not likely to be protected if lenient sentences are passed. Offenders are

not likely to be discouraged by sentences which do not involve loss of liberty.

If an immediate prison sentence is necessary, as I believe to be the case here, then it should be consistent with the duty to protect the interests of the public and to punish and deter the criminal. To use the words of Lawton L.J. in *Reg.* v. *Davies:*[2].

"the Courts have to make it clear that crime does not pay and the only way they can do so is by the length of sentences. Sentences show the court's disapproval, on behalf of the community, of particular types of criminal conduct."

In the instant case, Wong is a first offender. The sentencing court must realise, that when one speaks of deterrence that there are two aspects of deterrence. This is how it was put by Lawton L.J. in *Reg.* v. *Sargeant* [3]:

"There are two aspects of deterrence: deterrence of the offender and deterrence of likely offenders."

Looking at it from the point of view of individual deterrence, I find MacKenna J. saying this, in *Reg.* v. *Curran*[4]:

"As a general rule it is undesirable that a first sentence of immediate imprisonment should be very long, disproportionate to the gravity of the offence, and imposed... for reasons of general deterrence, that is as a warning to others. The length of a first sentence is more reasonably determined by considerations of individual deterrence."

Applying what has been said by MacKenna J. to an offender like Wong in the present case, the length of a first sentence of imprisonment is to be determined by considerations of individual deterrence. Looking at it from that point of view, I think that a sentence of 18 months' imprisonment for the first offence is proper. The fine of $200 is to remain undisturbed. In respect of the second offence, I think a concurrent sentence of two years' imprisonment in addition to the $300 fine is appropriate.

The appeal of the Public Prosecutor is, therefore, allowed.

Appeal allowed.

Solicitors: *Jagjit Singh & Co.*

BRUNEI REPORTS

VENNEL & ORS. v. PUBLIC PROSECUTOR

[C.A. (Sir Geoffrey Briggs, P., Sir Alan Huggins & Bewley J., Judicial Commissioners) November 22, 1984]

[Bandar Seri Begawan – Criminal Appeal No. 4 of 1984]

Criminal law and Procedure – House-breaking – Forgery – Dishonestly retaining stolen property – Sentence of imprisonment – Fine – Appeal against sentence – Demands of justice.

Upon arraignment the 2nd defendant pleaded guilty to two counts of house-breaking and one count of forgery. He was sentenced to 3½ years' imprisonment on each count concurrently. The 1st defendant pleaded guilty on the 5th day of the trial and was sentenced to 4 years' imprisonment on each count concurrently. The 3rd defendant pleaded guilty to the alternative offence of dishonestly retaining stolen property on the 2nd count. He was sentenced to 9 months' imprisonment and a fine of $10,000.00 or 3 months' imprisonment.

The 3rd defendant, aged 20, lost his employment as a result of the sentence of imprisonment. No evidence of his means appears to have been placed before the trial judge and the fine imposed was far beyond his ability to pay. The 3rd defendant is the younger brother of the 2nd defendant. They come from a good family. On behalf of the 1st and 2nd defendants it was submitted that greatly reduced terms would be appropriate.

Held, allowing the appeal: (1) as regards the 3rd defendant, it was wrong in principle to impose such a fine. Having regard to all the circumstances, the sentence imposed was greater than that which the justice of the case demanded. The sentence of 9 months' imprisonment was substituted with such term as would result in his immediate release;

(2) the sentences passed on the 1st and 2nd defendants are unnecessarily severe. Sentences by the trial judge substituted by sentences of 3 years and 2½ years respectively. to run from the date appointed by the trial judge.

Per Curiam: It is the duty of those advising the appellants to ensure that all necessary papers are placed before the Court of Appeal.

CRIMINAL APPEAL.

David Clidero for the appellant.

Ivan Leong (Deputy Public Prosecutor) for Public Prosecutor.

Sir Geoffrey Briggs, P: I will ask Sir Alan Huggins to deliver the judgment of the court.

Sir Alan Huggins J.A.: For convenience we will refer to the Applicants and the Appellant by the